

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
(406) 586-4364
1-800-624-3270
watercourt@mt.gov

FILED
05/16/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41H-1139-R-2022
Nordlund, Julia
7.00

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
GALLATIN RIVER BASIN (41H)
PRELIMINARY DECREE

* * * * *

CLAIMANT: SF West LLC

CASE 41H-1139-R-2022
41H 139103-00
41H 139104-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Claims 41H 139103-00 and 41H 139104-00 are owned by SF West LLC. The claim appeared in the Preliminary Decree for Basin 41H with DNRC issue remarks and were consolidated into Water Court Case 41H-1139-R-2022.

FINDINGS OF FACT

1. Claim 41H 139103-00 appeared in the Preliminary Decree for the Gallatin River (Basin 41H) with a flow rate issue remark resulting from pre-decree examination by the Department of Natural Resources and Conservation (DNRC).

2. Claim 41H 139104-00 appeared in the Preliminary Decree for the Gallatin River (Basin 41H) with acres irrigated and flow rate issue remarks resulting from pre-decree examination by the Department of Natural Resources and Conservation (DNRC).

3. To address the issue remarks, the Water Court ordered Claimant to confer with the Bozeman Regional Office of the DNRC, pursuant to § 85-2-248(5), MCA.

4. On December 8, 2022, water Resource Specialist Kara Huyser filed a memorandum stating she discussed the issues with counsel for SF West LLC however she no received no information regarding the issue remarks or their resolution.

5. Ms. Huyser recommended the following:

6. Claim 41H 139103-00 should have a reduced flow rate to the DNRC standard of 35 GPM/acre which would be 85 GPM.

7. Claim 41H 139104-00 should be reduced to 5 max acres irrigated.

8. On February 24, 2023, counsel for SF West LLC responded to the Court's Show Cause Order and stated that she had, in fact, been in contact with DNRC and SF West LLC disagrees with DNRC's recommendations.

9. Pursuant to a Master's Report for claim 41H 139104-00 filed on May 17, 1996 and adopted June 17, 1996, the acres irrigated issue remarks was based on a previous objection to the claim which was filed and then later withdrawn by DNRC. No additional evidence was provided by DNRC to explain how the acres irrigated should be reduced.

10. SF West LLC instead agrees to reduce the max acres irrigated to 9 on claim

41H 139104-00.

11. SF West LLC further provided information stating that due to the porous nature of the ground, the flow rate and volume of both claims should remain the same.

CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that an element of the prima facie claim is incorrect. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

2. The degree or weight of evidence needed to contradict or overcome the prima facie proof statute is a preponderance of the evidence. *Burkhartsmeier et al. v. Burkharmsmeier et al.*, Case 40G-2, (MT Water Court Memorandum Opinion and Order Adopting Master's Report, Mar. 11, 1997). The Montana Supreme Court has defined preponderance as "a relatively modest standard that the statutory criteria are 'more probable than not' to have been met." *Hohenlohe v. State*, 2010 MT 203 ¶ 33, 357 Mont. 438, 240 P.3d 628.

3. The Montana Water Court is permitted to use information submitted by the Department of Natural Resources and Conservation, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.

4. If a claimant agrees to reduce or limit an element of a claim, the Water Court does not need to determine whether the burden of proof has been met. The Water Court may accept a claimant's requested reduction or limitation without further presentation of evidence. Rule 17(c) W.R.Adj.R.

5. The evidence entered into the record is sufficient to resolve the issue remarks on this claim and support making the corrections outlined above.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends the Court make the changes specified above to correct the Preliminary Decree for this Basin.

Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended corrections have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via Electronic Mail:

Renee L. Coppock
Crowley Fleck PLLP
PO Box 2529
Billings, MT 59103-2529
(406) 252-3441
rcoppock@crowleyfleck.com
acowen@crowleyfleck.com

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H**

Water Right Number: 41H 139103-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: SF WEST LLC
1370 CREEKSIDE BLVD
NAPLES, FL 34108 1945

Priority Date: MAY 15, 1891

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 112.20 GPM

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 5 - LOW

Maximum Acres: 5.00

Source Name: MIKE CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SE	1	6S	4E	GALLATIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Period of Use: APRIL 1 TO OCTOBER 1

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	5.00		SE	1	6S	4E	GALLATIN

Total: 5.00

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

120518-00 139103-00 139104-00

POINT OF DIVERSION AND PLACE OF USE ARE LOCATED IN TRACT B CERTIFICATE OF SURVEY NO. 50 , GALLATIN COUNTY.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H**

Water Right Number: 41H 139104-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: SF WEST LLC
1370 CREEKSIDE BLVD
NAPLES, FL 34108 1945

Priority Date: MAY 15, 1891

Type of Historical Right: DECREED

Purpose (use): DOMESTIC

Flow Rate: 27.00 GPM

Volume: 3.00 AC-FT

Households: 2

Maximum Acres: 9.00

Source Name: MIKE CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SE	1	6S	4E	GALLATIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: FLOWING

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	9.00		SE	1	6S	4E	GALLATIN

Total: 9.00

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

120518-00 139103-00 139104-00

POINT OF DIVERSION AND PLACE OF USE ARE LOCATED IN TRACT B CERTIFICATE OF SURVEY NO. 50 ,
GALLATIN COUNTY.